IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH

CWP No.10112 of 2007
Date of decision: 12/7/2007

Pawan

...Petitioner

vs.

Kurukshetra University, Kurukshetra and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE AJAI LAMBA

Present: Mr. Vinod Gupta, Advocate, for the petitioner.

JUDGMENT:

This petition challenges order dated 6.7.2007, Annexure P.5 intimating the petitioner that his Roll Number was not received from the University due to non-fulfilment of eligibility criteria i.e., 45% marks in the qualifying examinations for being eligible for admission to the B.Ed course.

Case of the petitioner is that he was found eligible for the B.Ed course in the Combined Entrance Test held on 16.7.2006 and after due verification, he was allotted respondent No.3-College where he deposited Rs.35000/- as fee and also paid other charges. He attended the classes but he did not receive the Roll Number. He was informed that Roll Number had not been issued as he was not

eligible for admission.

Learned counsel for the petitioner submitted that at this stage, the authorities are debarred from with-holding the Roll Number of the petitioner as the fact that the petitioner was not eligible, could be duly verified when he applied for admission. He had submitted the certificate and thereafter, no change has taken place. He relied upon judgments of the Hon'ble Supreme Court in **Shri Krishan v. The Kurukshetra University, Kurukshetra,** AIR 1976 SC 376, **Ashok Chand Singhvi v. University of Jodhpur and others,** AIR 1989 SC 823 and judgment of this Court in **Mehnga Singh v. The State of Punjab and others,** 1989 (2) RSJ 311.

In **Shri Krishan** (supra), the result of the petitioner was cancelled after he had appeared in the final examination. It was observed by the Hon'ble Supreme Court that the authorities had ample opportunity to find out the defect in his candidature and his result could not be cancelled after he had appeared in the exam.

In **Ashok Chand Singhvi** (supra), the petitioner was admitted to B.E course and later on his candidature was cancelled on the ground that he had made application beyond the last date and that he was not eligible. It was held that he was eligible and mere fact that he applied beyond the last date, could not be enough to cancel his candidature.

In **Mehnga Singh (**supra), the candidate was admitted to B.Sc Medical Technology and after completing one year and nine months, his candidature was sought to be cancelled on the ground that he had furnished false certificate of being SC. It was held that the same could not be done.

Learned counsel for the University opposed the submission and submitted that the petitioner fully knew that he was not eligible and merely because in the verification, it was not earlier found that the petitioner was not eligible, could be no ground to perpetuate the illegality. He submits that the judgments relied upon are distinguishable.

We find that the judgments relied upon by the learned counsel for the petitioner are on peculiar facts and are distinguishable.

In **Shri Krishan** (supra), the University Statue in Clause 2(b) of the Kurukshetra Unviersity Calender, Volume I, Ordinance X referred to in para 6 of the judgment, provided that candidature could not be withdrawn after the examination. In para 6, it was observed:-

> "The last part of this statute clearly shows that the University could withdraw the certificate if the applicant had failed to attend the prescribed course of lectures. But this could be done only before the examination. It is, therefore, manifest

> that once the appellant was allowed to take the examination, rightly or wrongly, then the statute which empowers the University to withdraw the candidature of the applicant has worked itself out and the applicant cannot be refused admission subsequently for any infirmity which should have been looked into before giving the appellant permission to appear...”

In **Ashok Chand Sighvi** (supra), a finding was recorded in para 11 of the judgment that the candidate was eligible, which is as under:-

> “11.....Thus, it appears that the appellant had secured more than 60 per cent of marks in the aggregate in the Diploma examination and was not disqualified for admission in that regard.”

It was also observed that the admission had not been given by inadvertence or mistake but after considering the objection (Para 14).

In **Mehnga Singh** (supra), in para 3 of the judgment, it was made clear that the case was being decided without laying down any law, which is as under:-

> “3.....However, in the circumstances of this particular case, we are of the view that though we do not want to hold as a matter of law that the appellant is eligible to continue his studies on the basis of the selection made as a Scheduled Caste candidate, on equitable grounds we should permit

> the candidate to complete the course especially because the appellant has passed the first year examination and had also completed nine months in the second year's course before the writ petition was filed and three months after the writ petition was filed in pursuance of the order of this Court and he has written the examination. It would be a great hardship to the appellant if ultimately we have to retrace the whole step and declare that whatever he has done in the two years is not valid and even if we had to do it as required by law, we may not be justified in doing it without going into the question as to whether really the certificate given by the Tehsildar and counter-signed by the Additional District Magistrate was false or not...."

In **Central Airmen Selection Board and another v. Surender Kumar Das,** AIR 2003 SC 240, the High Court had followed the judgment in **Shri Krishan** (supra). On appeal, the view taken by the High Court was reversed with the following observations:-

> "7. The question, therefore, is whether in a case of this nature the principle of promissory estoppel should be invoked. It is well known that the principle of promissory estoppel is based on equitable principles. A person who has himself misled the authority by making a fake statement, cannot invoke this principle, if his misrepresentation misled the authority into taking

> a decision which on discovery of the misrepresentation is sought to be cancelled. The High Court has proceeded on the basis that the petitioner had not made any misrepresentation in his application to the effect that he had passed the Intermediate examination. As we have found above, this finding of the High Court is erroneous contrary to record and therefore must be set aside. In his application, the respondent had claimed that he had passed the Secondary examination as well as the Higher Secondary + 2 examination, and it is clear from the counter affidavit filed on behalf of the appellants that his candidature was considered on the basis that he had passed the Higher Secondary + 2 examination, as in that case he was entitled to claim relaxation in the matter of age. However, the mark sheet annexed to the application disclosed that the respondent had failed in the subject Chemistry and therefore, his claim in the application that he had passed the Higher Secondary + 2 examination was factually incorrect and a clear misrepresentation. In these circumstances, we are satisfied that the respondent could not be permitted to invoke the principle of promissory estoppel and the High Court was
> clearly erred in law in invoking the said principle in the facts of this case. The judgment and order of the High Court, therefore cannot be sustained."

In view of above, we are of the view that where a person fully knows his ineligibility but still he is able to get

admission by the said ineligibility being over-looked, he cannot claim any right on the principle of estoppel, or otherwise from action being taken, though there is no straight-jacket formula and each case may have to be decided on its own facts. In the present case, the petitioner clearly knew that he was not eligible. His ineligibility was never condoned. In these circumstances, merely because the ineligibility was over-looked, the authorities could not be debarred from taking action when his ineligibility came to light. Mere fact that earlier ineligibility was over-looked did not create any estoppel. The petitioner has not given any explanation as to why and how he applied even after knowing his ineligibility. In these circumstances, though the petitioner has suffered hardship, he also being responsible for the situation, we are unable to give any direction in his favour, in exercise of jurisdiction under Article 226 of the Constitution.

The writ petition is dismissed.

(Adarsh Kumar Goel)
Judge

July 12, 2007 (Ajai Lamba)
'gs' Judge